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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 BRYAN E. ORSER, on behalf of himself
11 and others similarly situated

12 Plaintiff,

13 v.
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15 SELECT PORTFOLIO SERVICING,
16 INC.,

17 Defendant.
18

NO. C 05-1507

ORDER GRANTING MOTION FOR
RECONSIDERATION, PRELIMINARILY
APPROVING SETTLEMENT,
PROVISIONALLY APPROVING CLASS
FOR SETTLEMENT PURPOSES, AND
SETTING FINAL FAIRNESS HEARING

19 This matter having come before the Court upon Plaintiff's Motion for Reconsideration of
20 the Court's July 27, 2009 Order Denying Amended Motion for Preliminary Approval of the
21 Proposed Class Settlement. The Court has considered the Motion and the Declaration of Guy W.
22 Beckett in Support of the Motion, including the exhibits thereto. Upon the Court's consideration
23 of the Motion, IT IS HEREBY ORDERED AS FOLLOWS:
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26 1. Plaintiff's Motion for Reconsideration of the Court's July 27, 2009 Order
27 Denying Amended Motion for Preliminary Approval of the Proposed Class Settlement (Dkt.
28 #87) is granted. In response to the Court's prior order, plaintiff has filed additional documents to
29 show that he did not release his claims as part of the class settlement in *Curry v. Fairbanks*
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1 *Capital Corp.*,¹ Case No. 03-10895-DPW (the “Curry action”) (D. Mass. 2004) and that he has
2 standing to pursue this action. Although the *Curry* action release of claims was very broad, it
3 does not appear to have released claims for events occurring after the order granting preliminary
4 approval of the Curry action settlement was entered, which occurred on December 10, 2003.
5 Plaintiff was charged the fees at issue on June 29, 2004. Moreover, the Curry action court
6 issued a subsequent order clarifying that the settlement should not be construed as permitting
7 defendant to impose fees that would violate the applicable contracts. For all these reasons, the
8 Court is satisfied that plaintiff has standing.

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12 2. The parties’ March 2, 2009 Amended Settlement Agreement (“Settlement
13 Agreement”) and June 30, 2009 Modification to Amended Settlement Agreement
14 (“Modification”) are hereby incorporated by reference in this Order as if fully set forth herein.
15 Capitalized terms in this Order shall, unless otherwise defined herein, have the same meaning as
16 in the Amended Settlement Agreement and Modification to Amended Settlement Agreement.

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19 3. Solely for the purpose of settlement in accordance with the Settlement Agreement
20 and Modification, and pursuant to Fed. R. Civ. P. 23(a) and (b)(3) of the Federal Rules of Civil
21 Procedure, this Court hereby provisionally approves the following settlement class (“Settlement
22 Class”):

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24 All persons who, during the period from July 28, 1999 to September 1, 2008, paid
25 a Payoff Statement Fee and/or Recording Fee to Select Portfolio Servicing, Inc.
26 (f/k/a Fairbanks Capital Corp.) in connection with a Loan secured by real
27 property located in the State of Washington, excepting only Curry Settlement
28 Class Members who were charged a Payoff Statement Fee and/or Recording Fee
by SPS prior to December 10, 2003.

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30 ¹ Defendant Select Portfolio Servicing, Inc. was formerly known as Fairbanks Capital
Corporation.

1 If, for any reason, the Settlement is not approved or does not become effective, this provisional
2 approval shall be null and void, and shall not be used or referred to for any purpose in this
3 Action or any other action or proceeding.
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5 4. For settlement purposes only, and subject to further consideration at the Court
6 Approval Hearing described in paragraph 14 below, the Settlement Class is provisionally found
7 to meet the relevant requirements of Fed. R. Civ. P. 23(a) and (b)(3).
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9 5. For settlement purposes only, and after considering the relevant factors in Fed. R.
10 Civ. P. 23, Representative Plaintiff Bryan Orser is conditionally designated as representative of
11 the Settlement Class and Class Counsel are conditionally appointed as counsel for the Settlement
12 Class. The law firms and attorneys conditionally representing the Settlement Class are:
13

14 Rob Williamson
15 WILLIAMSON & WILLIAMS
16 187 Parfitt Way S.W., Suite 250
17 Bainbridge Island, WA 98110
18 206.780.4447 Telephone
19 206.780.5557 Facsimile

20 Mark A. Griffin
21 KELLER ROHRBACK LLP
22 1201 Third Avenue, Suite 3200
23 Seattle, Washington 98101
24 206.623.1900 Telephone
25 206.623.3384 Facsimile

26 Guy W. Beckett
27 BECKETT LAW OFFICES, PLLC
28 1708 Bellevue Avenue
29 Seattle, Washington 98122
30 206.441.5444 Telephone
206.838.6346 Facsimile

6. Pursuant to Fed. R. Civ. P. 23, the terms of the Settlement Agreement and
Modification, and the Settlement provided for therein, are preliminarily approved as (a) fair,

1 reasonable, and adequate in light of the relevant factual, legal, practical and procedural
2 considerations of the Action, (b) free of collusion to the detriment of Class Members, and (c)
3 within the range of possible final judicial approval, subject to further consideration thereof at the
4 Court Approval Hearing described at paragraph 14 of this Order. Accordingly, the Settlement
5 Agreement and Modification, and the Settlement, are sufficient to warrant notice thereof, as set
6 forth below, and a full hearing on the Settlement.
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9 7. Pursuant to the terms of the Settlement Agreement, Defendant is hereby directed
10 to prepare the Class Member List. On or before ten business days from the date of this Order,
11 and pursuant to the procedures detailed in the Settlement Agreement, Defendant shall cause the
12 Settlement Administrator to provide notice of the Settlement and of the Court Approval Hearing
13 to each Class Member on the Class Member List by mailing to the address for the Class Member
14 on the Class Member List a copy of the Class Notice, substantially in the form approved by the
15 Court in its order dated April 14, 2009, together with a copy of the Claim Form, substantially in
16 the form approved by the Court in its order dated April 14, 2009. The parties may update the
17 previously-approved Class Notice and Claim Form to reflect the amended class definition and
18 updated applicable dates. The Settlement Administrator shall have discretion to format the Class
19 Notice and Claim Form in a reasonable manner to minimize mailing or administration costs.
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24 8. If any Class Notice mailed pursuant to the Settlement Agreement and paragraph 7
25 above is returned by the United States Postal Service as undeliverable, then the Settlement
26 Administrator shall re-mail the Class Notice, together with the Claim Form, to the forwarding
27 address, if any, provided on the face of the returned mail. If the returned mail does not reflect a
28 forwarding address, then the Settlement Administrator shall have no other obligation to re-mail
29 the Class Notice and Claim Form, except as otherwise provided in the Settlement Agreement.
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1 9. The Court finds that the Settlement Agreement's plan for class notice is the best
2 notice practicable under the circumstances and satisfies the requirements of due process and Fed.
3 R. Civ. P. 23. That plan is approved and accepted. This Court further finds that the Class Notice
4 and Claim Form comply with Fed. R. Civ. P. 23 and are appropriate as part of the notice plan
5 and the Settlement, and thus they are hereby approved and adopted. This Court further finds that
6 no other notice other than that identified in the Settlement Agreement is reasonably necessary in
7 the Action.
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10 10. Any Class Member who wishes to be excluded from the Settlement Class and not
11 be bound by the Settlement Agreement must complete and mail or hand-deliver a request for
12 exclusion ("Opt-Out") to the Settlement Administrator postmarked no later than November 11,
13 2009. For a Class Member's Opt-Out to be valid, it must be timely (as judged by the postmark
14 deadline set forth above) and (a) state the Class Member's full name, address and telephone
15 number; (b) contain the property address which secured the Loan as to which the Class Member
16 seeks exclusion; (c) contain the Class Member's personal and original signature(s) or the original
17 signature of a person previously authorized by law, such as a trustee, guardian, or person acting
18 under power of attorney, to act on behalf of the Class Member with respect to a claim or right
19 such as those in the Action (*i.e.*, conformed, reproduced, facsimile, or other non-original
20 signatures are not valid); and (d) unequivocally state the Class Member's intent to be excluded
21 from the Settlement Class, to be excluded from the Settlement, not to participate in the
22 Settlement, and/or to waive all right to the benefits of the Settlement. In those cases where a
23 Class Member includes persons who were obligors on the same Loan, the Class Member shall be
24 deemed a Successful Opt-Out as to that Loan only if all obligors as to that Loan elect to and
25 validly opt-out in accordance with this Order and the terms of the Agreement. Any Class
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1 Member who does not submit a timely Opt-Out, or otherwise comply with all requirements for
2 opting out as are contained in this Order, the Agreement and the Class Notice, shall be bound by
3 the Settlement Agreement, including the Release, as embodied in paragraphs 4.01 and 4.02 of
4 the Settlement Agreement, and any Final Judgment entered in the Action. Further, any Class
5 Member who is a Successful Opt-Out will be deemed to have waived any rights or benefits
6 under the Settlement, and will not have standing to object to the Settlement.
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9 11. Before the date of the Court Approval Hearing, Class Counsel, Counsel for the
10 Defendant, and the Settlement Administrator shall create and file with the Court under seal a
11 comprehensive list which will include full names and addresses of Successful Opt-Outs. The list
12 shall be maintained by this Court and the Clerk under seal in order to protect the privacy
13 interests of those persons identified thereon.
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16 12. Any Class Member who is not a Successful Opt-Out and who wishes to object to
17 the Settlement, in whole or in part, must mail or hand-deliver a written objection to the
18 Settlement or Settlement Agreement (“Objection”) with the Court, and contemporaneously mail
19 or hand-deliver it to Class Counsel and Counsel for the Defendant, no later than November 11,
20 2009. To be considered valid, each Objection must be timely and (a) set forth the Class
21 Member's full name, current address, and telephone number; (b) contain the address of the
22 property that secured the Loan in connection with which a Payoff Statement and/or Recording
23 Fee was paid by the Class Member; (c) contain the Class Member's personal and original
24 signature(s) or the original signature of a person previously authorized by law, such as a trustee,
25 guardian, or person acting under power of attorney, to act on behalf of the Class Member with
26 respect to a claim or right such as those in the Action (*i.e.*, conformed, reproduced, facsimile, or
27 other non-original signatures are not valid); (d) state that the Class Member objects to the
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1 Settlement, in whole or in part; (e) set forth a statement of the legal and factual basis for the
2 Objection; and (f) provide copies of any evidence or documents that the Class Member wishes to
3 submit in support of his/her objection(s). Any Class Member who does not submit a timely and
4 valid Objection in complete accordance with this Order, the Class Notice and the Settlement
5 Agreement shall not be treated as having filed a valid Objection to the Settlement. Objections
6 that are untimely and/or otherwise invalid will not be considered by this Court.
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9 13. Within ten (10) days of the date of this Order, Defendant shall mail a copy of this
10 Order to the appropriate officials as required by 28 U.S.C. § 1715(b). All filings, objections,
11 statements, or other submissions by any party or government entity noticed pursuant to 28
12 U.S.C. § 1715, or that claims an entitlement to have been noticed under 28 U.S.C. § 1715, shall
13 be filed with the Court, and contemporaneously mailed or hand-delivered upon Class Counsel
14 and Counsel for the Defendant, within ten days after they are received.
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17 14. A hearing (the “Court Approval Hearing”) shall be held before the undersigned at
18 9:00 a.m. on December 2, 2009, in the United States District Court for the Western District of
19 Washington, 700 Stewart Street, Courtroom 15106, Seattle, Washington, to determine, among
20 other things, (a) whether the proposed Settlement should be approved as fair, reasonable and
21 adequate, (b) whether the Action should be dismissed with prejudice pursuant to the terms of the
22 Settlement Agreement, (c) whether Class Members should be bound by the Release set forth in
23 the Settlement Agreement, (d) whether Class Members should be subject to a permanent
24 injunction that, among other things, bars Class Members from filing, commencing, prosecuting,
25 intervening in, or participating in (as class members or otherwise), any lawsuit, claim, demand or
26 proceeding in any jurisdiction that is based on or related to, directly or indirectly, matters within
27 the scope of the Release, (e) whether the Settlement Class should be finally certified, (f) the
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1 amount of attorneys' fees and costs to be awarded to Class Counsel, if any, and (g) the amount of
2 the award to be awarded to Plaintiff for his service as class representative, if any. This hearing
3 may be postponed, adjourned, or continued by order of the Court without further written notice
4 to the Settlement Class.
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6 15. Memoranda in support of the Settlement, applications for an Attorney Fee Award,
7 applications for a Litigation Cost Award, and applications for a Representative Plaintiff Award
8 to Representative Plaintiff shall be filed with the Court no later than seven (7) days before the
9 Court Approval Hearing. Plaintiff's memorandum must include the number of Class Members
10 who have returned claim forms and the approximate aggregate amount of Payoff Statement Fees
11 and/or Recording Fees paid by those Class Members to Defendant.
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13 16. Any Class Member, as well as any party or government entity noticed pursuant to
14 28 U.S.C. § 1715 (or that claims an entitlement to have been noticed under 28 U.S.C. § 1715),
15 who wishes to appear at the Court Approval Hearing, whether *pro se* or through counsel, must
16 file a notice of appearance in the Action, and contemporaneously mail the notice to Class
17 Counsel and Counsel for the Defendant, on or before November 11, 2009. No Class Member
18 shall be permitted to raise matters at the Court Approval Hearing that the Class Member could
19 have raised in an Objection, but failed to do so. Further, no party or government entity noticed
20 pursuant to 28 U.S.C. § 1715 (or that claims an entitlement to have been noticed under 28 U.S.C.
21 § 1715) shall be permitted to raise matters at the Court Approval Hearing that the party or
22 government entity could have raised in a statement or other submission, but failed to do so. Any
23 Class Member, as any party or government entity noticed pursuant to 28 U.S.C. § 1715 (or that
24 claims an entitlement to have been noticed under 28 U.S.C. § 1715), who fails to comply with
25 this Order, the Class Notice and/or the Settlement Agreement may be barred from appearing at
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1 the Court Approval Hearing.

2 17. Any Class Member who wishes to intervene in the Action or seek other relief
3 from the Court must file with the Court, and contemporaneously mail or hand-deliver to Class
4 Counsel and Counsel for the Defendant, an appropriate motion or application, together with all
5 supporting pleadings or documentation, on or before November 11, 2009.
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7 18. The postmark deadline for the submission of Valid Claim Forms shall be
8 November 2, 2009. The validity of Claim Forms otherwise shall be governed by the terms stated
9 in the Settlement Agreement.
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11 19. All other events contemplated by the Settlement Agreement to occur after this
12 Order and before the Court Approval Hearing shall be governed by the Settlement Agreement, to
13 the extent not inconsistent herewith.
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15 20. Defendant and Counsel for the Defendant are hereby authorized: (a) to establish
16 the means necessary to administer the Settlement; and (b) to retain a settlement administrator to
17 assist in effectuating the terms of, and administering, the Settlement. This Court hereby
18 authorizes and appoints Tilghman & Co. to serve as Settlement Administrator in the Action.
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20 21. All proceedings in the Action, other than such as may be necessary to carry out
21 the terms and conditions of the Settlement Agreement or the responsibilities related or incidental
22 thereto, are stayed and suspended until further order of this Court.
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24 22. If Final Approval of the Settlement is not achieved, or if the Settlement is
25 terminated for any reason, the Settlement and all proceedings had in connection therewith shall
26 be without prejudice to the status quo ante rights of the parties to the Action, and all Orders
27 issued pursuant to the Settlement shall be vacated. In such an event, the Settlement and all
28 negotiations concerning it shall not be used or referred to in these Action for any purpose
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1 whatsoever. This Order shall be of no force or effect if Final Approval does not occur for any
2 reason, and nothing in this Order shall be construed or used as an admission, concession, or
3 declaration by or against Defendant, of any fault, wrongdoing, breach, or liability. Nor shall this
4 Order be construed by or against Representative Plaintiff or the Class Members that their claims
5 lack merit or that the relief requested in these Action is inappropriate, improper, or unavailable,
6 or as a waiver by any Party of any defenses it may have. Nor shall this Order be construed or
7 used to show that certification of one or more classes would or would not be appropriate if the
8 Action were to be litigated rather than settled.
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12 22. Neither the Settlement nor the Settlement Agreement constitutes an admission,
13 concession, or indication by the Parties of the validity of any claims or defenses in the Action or
14 of any wrongdoing, liability, or violation of law by the Defendant, which vigorously denies all of
15 the claims and allegations raised in the Action.
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17 24. The Court reserves the right to approve the Settlement with such modifications, if
18 any, as may be agreed to by Class Counsel and Counsel for the Defendant and without future to
19 notice to the Class Members.
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21 25. Except as set forth in this Order and the Settlement Agreement, the Parties (and
22 Plaintiffs' Counsel and Counsel for the Defendant) shall not issue or cause to be issued any
23 public, mass, or generalized communications about the Settlement (other than disclosures
24 required by law), whether by press release, advertisements, Internet postings, or any other means
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1 or media, without prior approval of the Court and/or the express written consent of the other
2 Party.
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5 DATED this 14th day of August, 2009.
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10 Robert S. Lasnik
11 United States District Judge
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